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PETITION FOR MODIFICATION OF OPINION, AND DECREE PROPOSED BY COMPLAINANT

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

ORIGINAL NO. [illegible] 4 1

State of New Mexico

vs.

[illegible]

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1924

Original, No. 12

STATE OF NEW MEXICO

vs.

STATE OF COLORADO

PETITION FOR MODIFICATION OF THE OPINION

To the Honorables, the Chief Justice and Associate Justices of the Supreme Court of the United States.

Your petitioner, the State of New Mexico, complainant in the above entitled cause, respectfully shows to the Court, that a modification of the terms of the opinion of the Court is necessary fully to express the views to which the decree must conform, and another is desirable in the interest of economy, which can be made without affecting the result, and submits the following statement

First: The court in its opinion says that the line as surveyed and marked by Darling from the Macomb monument to the 109th meridian, must be held to be the recognized and established boundary between the two States, but appears to have overlooked the fact, shown by uncontradicted testimony, that the line was not completely surveyed and marked by Darling as is distinctly set forth under the second point in the brief for complainant in pages four to six of said brief. It appears from that uncontradicted

testimony that while Darling's notes show, obviously for the purpose of correcting his error in running far south of the 37th parallel of latitude, that he ran his line back easterly from the 214th mile to the 191st mile, yet he never actually ran that distance, but made an imaginary and fictitious record, so that he never connected his astronomical monuments six and seven. The opinion of the court says that this line should now be re-surveyed and re-marked by a commissioner or commissioners appointed by the court, but it is clear that those twenty-three miles of Darling's line never were surveyed by him, and can not be re-surveyed.

If this patent defect in Darling's work is to be treated as of no importance to the decision by the court, as it would be reasonable to infer from the opinion, it is suggested that the opinion might be amended, by adding to the paragraph near the end of the opinion, which closes with the words, "decreed to be the boundary between the two states," the following language: "and the restoration and resurvey of that portion of the Darling line between the 203rd mile corner, and the 8th astronomical monument, resurveyed under the authority of the Commissioner of the General Land Office by William C. Perkins in 1917, a plat of which appears in the printed record between pages 792, and 793, is to be taken and considered as a part of the Darling line, now declared, with the Major-Preston line, to be the boundary between the two states."

Unless this, or something equivalent, is put in the opinion so as to make a complete line from the 191st mile corner, to the 7th astronomical monument, a portion of which otherwise is not in Darling's original survey in the light of the uncontradicted testimony hereinbefore mentioned, the opinion will not provide for a complete line.

Second: The opinion of the court in the paragraph next to the last, declares that the boundary line should now be resurveyed, and remarked, by a commissioner or commissioners appointed by the court; and it is now urged upon the court that this is not nec-

essary in order to carry into effect the judgment of the court, and complainant prays that this may be omitted from the decree to be made by the court, as it would impose a very large expense upon the parties to this cause, which would be a most grievous burden to the complainant, if not to the defendant. It would necessitate putting into the field a large party, including surveyors, astronomers, and other assistants, presumably as large as the party employed by Mr. Carpenter, which appears, on pages 9 and 10 of the Record to have numbered twenty-two persons in 1902, and twenty-five in 1903, and in addition it appears in the testimony, that Mr. Arthur Kidder, assisted in the astronomical work during the whole of Carpenter's survey. It would be necessary to keep such a party in the field for many months to re-survey the whole of the Darling and Major Preston line, and such work, wherever it may be necessary to identify the Darling line, could well be performed, like the restoration by Mr. Perkins in 1917, under the authority of the Commissioner of the General Land Office; and it is well here to note that the present litigation has clearly been brought about only by the action of the General Land Office, in holding that a new survey was necessary, upon which estimates of costs were made and appropriations asked by the Land Office and for which appropriations were made by the Congress of the United States, after which the General Land Office attempted to recognize officially the new or Carpenter line, because had it not been for this course of conduct on the part of the Land Office, it is inconceivable that any controversy between the two states ever would have arisen. It is also well to remember, that the attempted re-survey and restoration by Perkins, in 1917, which clearly shows Darling's failure to make any connection between the 6th and 7th astronomical monuments, was made only after the General Land Office was compelled to abandon its intention to adopt and recognize the Carpenter line because of its failure to get Congress to recognize it after the Congressional recognition had been vetoed by President Roosevelt on the ground that Congress had no jurisdiction over such questions of boundaries

between states. In this connection it is not improper to call attention to the financial condition of the complainant. The assessed value of all property in New Mexico in 1920 was $405,000,000. For 1923 the assessed value of all property was $315,000,000, and in 1924 it will not exceed $313,000,000. More than 4,000 farms have been abandoned in the last two years, and in 1924 nearly 60,000 farmers were without the money or credit to purchase seed and other things needed for farming operations. In 1919 the value of farm products was estimated at $40,000,000 and for 1923 it was only $20,000,000, in spite of the added value of a new crop—cotton. This enormous reduction in the assessed value of property is due almost, if not quite, entirely to several years of drought, which have quite obliterated the cattle raising business of the state which it is believed previously constituted fully one third of all the products in the state, and which, in many places caused such complete loss of crops, that farmers were not able to secure enough to provide seed for the next year.

The state is having the greatest imaginable difficulty just at this present time, in making appropriations sufficient to carry on the ordinary operations of the government, and to meet obligations of various kinds which have been already incurred, the constitutional limit of taxation, for state purposes having been reached.

The cost of the proposed re-survey, it is believed, would probably reach $40,000, or $50,000. In view of these conditions complainant prays that the opinion be modified, by striking out the paragraph next to the last, and inserting the following or something equivalent thereto:

"Inasmuch as the course of the General Land Office in causing the Carpenter survey to be made, and in recognizing that survey as the boundary between the two states, was obviously the cause of the present litigation, it is recommended to that office that steps be taken to resurvey and remark the Darling and Preston-Major surveys as far as may be necessary fully to show the

correct boundary on the earth's surface, in accordance with this opinion."

Complainant submits herewith the form of a decree, which is believed to be sufficient to carry into effect the conclusion of the Court.

STATE OF NEW MEXICO

By Frank W. Clancy,

Its Counsel.

SUPREME COURT OF THE UNITED STATES

No. 12, Original. — October Term, 1924

The State of New Mexico, Complainant)

vs.)

The State of Colorado.)

Final Decree Proposed by Complainant

This cause having heretofore come on for hearing, and having been argued by Mr. Frank W. Clancy, special counsel, for complainant, and by Mr Oliver Dean, Assistant Attorney General of Colorado on behalf of defendant, and submitted to the court and the court having on January 26, 1925, announced its decision as appears from the opinion on file which directed the parties to submit the form of a decree to carry the decision of the court into effect, and the complainant having submitted this decree as one which will carry the conclusions of the court into effect

It is now ordered, adjudged, and decreed by the court that the bill of complaint in this cause be, and the same hereby is, dismissed, and that, under the cross bill of Colorado, the Darling-

and Major-Preston line be, and the same hereby is decreed to be the boundary between the two states, that line being identified and described in the record and in the said opinion of this court, and it is further ordered, adjudged, and decreed that the re-survey, and restoration of that portion of the Darling line between the 203rd mile corner, and the 8th astronomical monument of the Darling survey, made by William C. Perkins, United States Surveyor, under authority of the Commissioner of the General Land Office, in September, October and November, 1917, a plat whereof appears in the printed record in this cause immediately after printed page 792 is to be taken and considered as a part of the Darling line, hereby determined, with the Major-Preston line, to be the boundary between the two states, so as to complete the line between Darling's astronomical monuments, 6 and 8; and it is further ordered, adjudged and decreed by the court that the costs in this case, to be taxed by the clerk of the court, should be equally divided between the complainant and defendant and that the defendant should refund to the complainant any excess over half of said costs which may have been paid by the complainant, upon the certificate of the Clerk as to the amount of said costs and as to what may have been paid by the respective parties.